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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,944	09/12/2003	Daniel D. Dunn		7013

28409 7590 06/22/2004

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EXAMINER

HORTON, YVONNE MICHELE

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 06/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,944

Applicant(s)

DUNN ET AL.

Examiner

Yvonne M. Horton

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5 and 8 is/are rejected.
- 7) ☒ Claim(s) 2-4, 6, 7 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/08/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: The specification contains a substantial number of words with missing letters. It is not clear if this was an error on behalf of the applicant or perhaps a scanning error within the Office. In order to ensure a clean and clear specification, a new specification in a **larger font** is required. Prior to submittal of a sub-specification, the applicant is required to review his original to ensure that there are no typographical errors.

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The claims are rejected under the judicially created doctrine of double patenting over the claims of U. S. Patent No. 6,647,686, as listed below, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The Instant Application

US 6,647,686

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3,4,5

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows:

a reinforced composite system for constructing insulated concrete structures comprising panels having inside and outside surfaces, top, bottom and end edges, said panels placed horizontally in an opposing and parallel, spaced-apart relationship, panels having an interlocking means at the top and bottom edge of each panel; said panels comprising first and second foam panels; at least two vertical studs embedded in the first panel section, said studs spaced longitudinally and parallel from each other; at least two vertical studs embedded in second panel section, said studs spaced longitudinally and parallel from each other; said interlocking means comprising, a tongue extending from and parallel to the top edge of each panel, and a complementary groove recessed into and parallel to the bottom edge of each panel, said tongue and groove comprising complimentary preformed units adhered to the foam plastic core, the groove unit of each panel having appendages protruding into the groove, the spacing of the appendages corresponding with the locations of embedded studs, and the tongue unit of each panel having slots that compliment said appendages, such

that when said panels are attached the appendages in the grooves engage the slots in the tongues forcing studs from adjacent panels into a vertical alignment, a plurality of spreaders at each stud location, extending between opposing panels and slidably engaging the studs in opposing panels, thereby creating a form with a cavity between the inside surfaces of the panels for receiving fluid concrete; said spreaders; comprising a first flange and second flange for engaging studs, flanges oriented in an opposing parallel relationship, flanges being connected by horizontal members, each horizontal member having multiple formations to support and restrain wall reinforcement bars, wherein formations in the topmost horizontal members are located in the top of said members, top most horizontal member being located substantially at the top of the flanges, and wherein formations in the bottommost horizontal members are located in the bottom of said members, bottommost horizontal member being located substantially at the bottom of the flange, thus when spreaders are stacked the formations in the top and bottom horizontal members compliment the formations of adjacent spreaders, the horizontal member from the upper spreader resting upon the horizontal member of the spreader below, the complimentary formations each forming half of a full circle, allowing wall reinforcement bars to be restrained within the circular formations.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during

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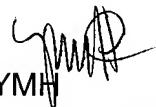
prosecution of the application which matured into a patent. See also MPEP § 804.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703) 308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703) 308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


YMH
June 11, 2004